

HOUSE BILL 2

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2004 Regular Session
4lr0668

(PRE-FILED)

By: **The Speaker and Delegates D. Davis, Doory, Lee, Barkley, Benson, Bobo, Bromwell, Bronrott, Busch, Cadden, Cane, Cardin, G. Clagett, V. Clagett, Conroy, Conway, Cryor, DeBoy, Dumais, Feldman, Franchot, Griffith, Harrison, Healey, Hixson, Howard, Hurson, James, Jones, Kaiser, Kelley, King, Kirk, Krysiak, Love, Madaleno, Malone, Mandel, Marriott, McHale, McIntosh, Menes, Minnick, Moe, Montgomery, Pendergrass, Proctor, Quinter, Ramirez, Rosenberg, Smigiel, Sophocleus, Sossi, Taylor, V. Turner, Vallario, and Vaughn**

Requested: November 17, 2003

Introduced and read first time: January 14, 2004

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2

Maryland Do Not Call Registry Act

3 FOR the purpose of providing for the enforcement of a certain federal "do not call"
4 registry under State law; providing that a violation of certain federal laws is a
5 violation of this Act; requiring the Public Service Commission, in consultation
6 with the Office of the Attorney General, to examine periodically whether a
7 certain federal program exists and is in effect; requiring the Commission, under
8 certain circumstances, to create, maintain, and update a database of residential
9 telephone subscribers in the State who choose not to receive telephone
10 solicitations; authorizing the Commission to contract with another entity to
11 create and operate the database; requiring the database to be in operation
12 within a certain period; requiring the Commission to adopt certain regulations,
13 under certain circumstances, relating to notice of the database, fees to be
14 charged for use of the database, access to the database, inclusion in the
15 database, and other matters; requiring a person who intends to engage in
16 telephone solicitation to purchase the updated version of the database for each
17 client; prohibiting a person who engages in telephone solicitation from soliciting
18 or causing a solicitation to a listed residential telephone subscriber; requiring
19 the Commission to make the database available to persons engaged in telephone
20 solicitation at a certain time; limiting the use of the information contained in the
21 database; authorizing certain legal action against a person engaged in telephone
22 solicitation for a violation of this Act and authorizing the recovery of certain
23 damages and fees; providing a limitation on legal action; providing for a certain
24 affirmative defense against a legal action; providing that a violation of this Act
25 is an unfair and deceptive trade practice and may be a violation of the State
26 Credit Services Businesses Act under certain circumstances; establishing
27 certain penalties for certain violations of this Act; providing for the application

1 of this Act; providing for certain exceptions to this Act; defining certain terms
2 and redefining a certain term; requiring that the Commission and the Office of
3 the Attorney General report on certain matters to certain committees of the
4 General Assembly by a certain date; and generally relating to telephone
5 solicitations in the State.

6 BY repealing and reenacting, with amendments,
7 Article - Commercial Law
8 Section 14-2201, 14-2202, and 14-2205
9 Annotated Code of Maryland
10 (2000 Replacement Volume and 2003 Supplement)

11 BY repealing and reenacting, without amendments,
12 Article - Commercial Law
13 Section 14-2203 and 14-2204
14 Annotated Code of Maryland
15 (2000 Replacement Volume and 2003 Supplement)

16 BY adding to
17 Article - Commercial Law
18 Section 14-2205
19 Annotated Code of Maryland
20 (2000 Replacement Volume and 2003 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - Commercial Law**

24 14-2201.

25 (a) In this subtitle the following words have the meanings indicated.

26 (B) "CHARITABLE ORGANIZATION" HAS THE MEANING STATED IN § 6-101 OF
27 THE BUSINESS REGULATION ARTICLE.

28 (C) "COMMISSION" MEANS THE PUBLIC SERVICE COMMISSION.

29 [(b)] (D) "Consumer" means an actual or prospective purchaser, lessee, or
30 recipient of consumer goods, consumer services, or consumer realty.

31 [(c)] (E) (1) "Consumer goods", "consumer realty", and "consumer services"
32 mean, respectively, goods, real property, and services which are primarily for
33 personal, household, family, or agricultural purposes.

1 (2) (i) [Subject] IN §§ 14-2203 AND 14-2204 OF THIS SUBTITLE, AND
2 SUBJECT to subparagraph (ii) of this paragraph, "consumer services" does not include
3 financial services or securities sales.

4 (ii) "Consumer services" includes any solicitation offering credit
5 services where:

6 1. The consumer is required to call a telephone number;

7 2. The consumer is charged a separate toll fee for the call;

8 and

9 3. The person making the solicitation receives any portion of
10 the separate telephone toll fee paid by the consumer.

11 [(d)] (F) "Credit services" means providing or offering to provide any service
12 in return for the payment of money or other consideration, where the service is held
13 out to provide assistance to a consumer with regard to:

14 (1) Improving the consumer's credit history, credit rating, or credit
15 record; or

16 (2) Obtaining an extension of credit for the consumer.

17 (G) (1) "DATABASE" MEANS A LIST CONSISTING SOLELY OF THE TELEPHONE
18 NUMBERS OF MARYLAND RESIDENTIAL SUBSCRIBERS WHO DO NOT WISH TO
19 RECEIVE TELEPHONE SOLICITATIONS.

20 (2) "DATABASE" INCLUDES THE FEDERAL "DO NOT CALL" REGISTRY
21 UNDER THE JURISDICTION OF THE FEDERAL COMMUNICATIONS COMMISSION AND
22 THE FEDERAL TRADE COMMISSION.

23 [(e)] (H) (1) "Merchant" means a person who, directly or indirectly, offers or
24 makes available to consumers any consumer goods, consumer services, or consumer
25 realty.

26 (2) "Merchant" does not include a person who is exempt under § 13-104
27 of this article.

28 (I) (1) "RESIDENTIAL SUBSCRIBER" MEANS:

29 (I) AN INDIVIDUAL WHO HAS SUBSCRIBED TO RESIDENTIAL
30 TELEPHONE SERVICE FROM A LOCAL EXCHANGE COMPANY;

31 (II) ANY INDIVIDUAL WHO RESIDES WITH THE SUBSCRIBER; OR

32 (III) AN INDIVIDUAL WHO HAS SUBSCRIBED TO WIRELESS
33 TELEPHONE SERVICE WITH A MARYLAND AREA CODE.

34 (2) "RESIDENTIAL SUBSCRIBER" DOES NOT INCLUDE A COMMERCIAL
35 SUBSCRIBER TO A TELEPHONE SERVICE.

1 [(f)] (J) "Telephone solicitation" means [the attempt by a merchant to sell or
2 lease consumer goods, services, or realty to a consumer located in this State that is:

3 (1) Made entirely by telephone; and

4 (2) Initiated by the merchant] ANY VOICE COMMUNICATION OVER A
5 TELEPHONE LINE FOR THE PURPOSE OF ENCOURAGING THE PURCHASE OR RENTAL
6 OF, OR INVESTMENT IN, PROPERTY, GOODS, OR SERVICES.

7 14-2202.

8 (a) [The provisions of this] SECTIONS 14-2203 AND 14-2204 OF THIS subtitle do
9 not apply to a transaction:

10 (1) Made in accordance with prior negotiations in the course of a visit by
11 the consumer to a merchant operating a retail business establishment which has a
12 fixed permanent location and where consumer goods are displayed or offered for sale
13 on a continuing basis;

14 (2) In which the person making the solicitation or the business
15 enterprise for which the person is calling:

16 (i) Has made a previous sale to the consumer; or

17 (ii) Has a preexisting business relationship with the consumer;

18 (3) Which is covered by the provisions of Subtitle 3 of this title;

19 (4) In which:

20 (i) The consumer may obtain a full refund for the return of
21 undamaged and unused goods to the seller within 7 days of receipt by the consumer;
22 and

23 (ii) The seller will process the refund within 30 days of receipt of
24 the returned merchandise by the consumer;

25 (5) In which the consumer purchases goods or services pursuant to an
26 examination of a television, radio, or print advertisement or a sample, brochure,
27 catalogue, or other mailing material of the merchant that contains:

28 (i) The name, address, and telephone number of the merchant;

29 (ii) A description of the goods or services being sold; and

30 (iii) Any limitations or restrictions that apply to the offer; or

31 (6) In which the merchant is a [bona fide] charitable organization [as
32 defined in § 6-101 of the Business Regulation Article].

1 (b) Notwithstanding subsection (a) of this section, this subtitle applies to any
2 solicitation offering credit services where:

3 (1) The consumer is required to call a telephone number;

4 (2) The consumer is charged a separate toll fee for the call; and

5 (3) The person making the solicitation receives any portion of the
6 separate telephone toll fee paid by the consumer.

7 14-2203.

8 (a) A contract made pursuant to a telephone solicitation is not valid and
9 enforceable against a consumer unless made in compliance with this subtitle.

10 (b) A contract made pursuant to a telephone solicitation:

11 (1) Shall be reduced to writing and signed by the consumer;

12 (2) Shall comply with all other applicable laws and regulations;

13 (3) Shall match the description of goods or services as that principally
14 used in the telephone solicitation;

15 (4) Shall contain the name, address, and telephone number of the seller,
16 the total price of the contract, and a detailed description of the goods or services being
17 sold;

18 (5) Shall contain, in at least 12 point type, immediately preceding the
19 signature, the following statement:

20 "You are not obligated to pay any money unless you sign this contract and return
21 it to the seller."; and

22 (6) May not exclude from its terms any oral or written representations
23 made by the merchant to the consumer in connection with the transaction.

24 14-2204.

25 A merchant engaging in a telephone solicitation may not make or submit any
26 charge to the consumer's credit account until after the merchant receives from the
27 consumer a copy of the contract which complies with this subtitle.

28 14-2205.

29 (A) THIS SECTION DOES NOT APPLY TO A TELEPHONE SOLICITATION THAT:

30 (1) IS MADE BY A PERSON TO A RESIDENTIAL SUBSCRIBER IF:

31 (I) THE PERSON IS RESPONDING TO AN EXPRESS, VERIFIABLE
32 REQUEST OR INQUIRY BY THE RESIDENTIAL SUBSCRIBER; OR

1 (II) THE RESIDENTIAL SUBSCRIBER GAVE PRIOR EXPRESS,
2 VERIFIABLE PERMISSION FOR THE PERSON TO MAKE THE TELEPHONE
3 SOLICITATION;

4 (2) IS MADE BY OR ON BEHALF OF A CHARITABLE ORGANIZATION;

5 (3) IS LIMITED TO SOLICITING THE EXPRESSION OF IDEAS, OPINIONS,
6 OR VOTES;

7 (4) IS MADE TO A BUSINESS; OR

8 (5) UNLESS THE COMMISSION FINDS THAT THE FEDERAL "DO NOT
9 CALL" REGISTRY IS NOT IN EFFECT UNDER SUBSECTION (B)(1)(II) OF THIS SECTION,
10 OTHERWISE COMPLIES WITH FEDERAL LAW AND REGULATIONS CONCERNING
11 TELEMARKETING SALES AND THE REGISTRY.

12 (B) (1) (I) IN CONSULTATION WITH THE OFFICE OF THE ATTORNEY
13 GENERAL, THE COMMISSION PERIODICALLY SHALL EXAMINE WHETHER A FEDERAL
14 PROGRAM, INCLUDING A "DO NOT CALL" REGISTRY OR SIMILAR DATABASE, EXISTS
15 AND IS IN EFFECT TO PROVIDE PROTECTION FOR MARYLAND RESIDENTIAL
16 SUBSCRIBERS AGAINST UNWANTED TELEPHONE SOLICITATION.

17 (II) IF THE COMMISSION FINDS THAT THE FEDERAL PROGRAM,
18 INCLUDING A "DO NOT CALL" REGISTRY OR SIMILAR DATABASE, DOES NOT EXIST OR
19 IS NOT IN EFFECT, THE COMMISSION SHALL:

20 1. NOTIFY THE GOVERNOR, THE OFFICE OF THE ATTORNEY
21 GENERAL, AND, SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE
22 GENERAL ASSEMBLY OF THAT FACT; AND

23 2. ESTABLISH A STATE DATABASE UNDER PARAGRAPH (2) OF
24 THIS SUBSECTION.

25 (2) (I) THIS PARAGRAPH APPLIES ONLY IF THE COMMISSION HAS
26 FOUND THAT THE FEDERAL "DO NOT CALL" REGISTRY IS NOT IN EFFECT UNDER
27 PARAGRAPH (1)(II) OF THIS SUBSECTION.

28 (II) 1. THE COMMISSION SHALL ESTABLISH AND PROVIDE FOR
29 THE CREATION AND OPERATION OF A DATABASE THAT CONSISTS SOLELY OF
30 TELEPHONE NUMBERS OF MARYLAND RESIDENTIAL SUBSCRIBERS WHO DO NOT
31 WISH TO RECEIVE TELEPHONE SOLICITATIONS.

32 2. THE COMMISSION SHALL UPDATE THE DATABASE EVERY
33 3 MONTHS.

34 3. THE COMMISSION MAY CONTRACT WITH ANOTHER
35 ENTITY THAT SUBMITS A COMPETITIVE BID TO CREATE, OPERATE, AND UPDATE THE
36 DATABASE.

1 (III) FOR THE PURPOSES OF SUBSECTION (E) OF THIS SECTION, THE
2 COMMISSION SHALL MAKE EACH UPDATE TO THE DATABASE AVAILABLE TO
3 PERSONS ENGAGED IN TELEPHONE SOLICITATION AT A REASONABLE TIME PRIOR TO
4 THE EFFECTIVE DATE OF THE UPDATE.

5 (IV) THE COMMISSION SHALL CREATE AND HAVE THE DATABASE IN
6 OPERATION WITHIN 6 MONTHS AFTER MAKING A FINDING UNDER PARAGRAPH (1)(II)
7 OF THIS SUBSECTION.

8 (C) IF THE COMMISSION FINDS THAT THE FEDERAL "DO NOT CALL" REGISTRY
9 IS NOT IN EFFECT UNDER SUBSECTION (B)(1)(II) OF THIS SECTION, THE COMMISSION
10 SHALL ADOPT REGULATIONS TO:

11 (1) SPECIFY THE METHODS BY WHICH RESIDENTIAL SUBSCRIBERS ARE
12 TO BE INFORMED OF THE OPPORTUNITY TO FILE A NOTICE WITH THE COMMISSION
13 REQUESTING THAT THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER BE
14 ADDED TO THE DATABASE, INCLUDING:

15 (I) REQUIRING EACH LOCAL EXCHANGE COMPANY AND WIRELESS
16 TELEPHONE SERVICE PROVIDER TO INFORM ITS RESIDENTIAL SUBSCRIBERS; AND

17 (II) USING PUBLIC SERVICE ANNOUNCEMENTS, MAILINGS, OR
18 OTHER MEANS;

19 (2) SPECIFY THE METHODS BY WHICH A RESIDENTIAL SUBSCRIBER IS
20 TO BE INFORMED ABOUT THE TYPES OF CALLS THAT ARE EXEMPT FROM THIS
21 SECTION;

22 (3) SPECIFY THE METHODS BY WHICH A RESIDENTIAL SUBSCRIBER
23 WHO FILES A NOTICE IS INFORMED ABOUT THE EFFECTIVE DATE OF THE DATABASE
24 AND EACH UPDATE TO THE DATABASE THAT WILL CONTAIN THE RESIDENTIAL
25 SUBSCRIBER'S TELEPHONE NUMBER;

26 (4) SPECIFY THE METHODS BY WHICH A RESIDENTIAL SUBSCRIBER
27 MAY:

28 (I) FILE AN INITIAL NOTICE WITH THE COMMISSION THAT ADDS
29 THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER TO THE DATABASE; AND

30 (II) FILE A CANCELLATION NOTICE WITH THE COMMISSION THAT
31 DELETES THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER FROM THE
32 DATABASE;

33 (5) WHERE A RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER
34 CHANGES, SPECIFY THE EFFECT THE CHANGE WILL HAVE ON THE RESIDENTIAL
35 SUBSCRIBER'S LISTING ON THE DATABASE;

36 (6) SPECIFY THE METHODS BY WHICH A PERSON INTENDING TO MAKE A
37 TELEPHONE SOLICITATION CAN OBTAIN ACCESS TO THE LATEST UPDATED VERSION
38 OF THE DATABASE;

1 (7) SPECIFY THE FEES THAT A PERSON MUST PAY TO THE COMMISSION
2 TO OBTAIN A COPY OF THE LATEST UPDATED VERSION OF THE DATABASE; AND

3 (8) SPECIFY OTHER MATTERS RELATING TO THE DATABASE THAT THE
4 COMMISSION CONSIDERS DESIRABLE OR, AFTER CONSULTATION WITH THE
5 ATTORNEY GENERAL, THAT THE ATTORNEY GENERAL CONSIDERS DESIRABLE FOR
6 ENFORCEMENT.

7 (D) (1) THIS SUBSECTION APPLIES ONLY IF THE COMMISSION FINDS THAT
8 THE FEDERAL "DO NOT CALL" REGISTRY IS NOT IN EFFECT UNDER SUBSECTION
9 (B)(1)(II) OF THIS SECTION.

10 (2) THE COMMISSION SHALL ESTABLISH FEES UNDER THIS SECTION
11 SUFFICIENT TO COVER THE COSTS OF IMPLEMENTING, MAINTAINING, AND
12 ADMINISTERING THE DATABASE.

13 (3) THE COMMISSION MAY NOT CHARGE A FEE TO A RESIDENTIAL
14 SUBSCRIBER FOR LISTING THE SUBSCRIBER IN THE DATABASE OR FOR RENEWING
15 THE SUBSCRIBER'S LISTING.

16 (E) (1) A PERSON WHO INTENDS TO MAKE A TELEPHONE SOLICITATION TO
17 A RESIDENTIAL SUBSCRIBER IN THE STATE SHALL:

18 (I) IF THE FEDERAL "DO NOT CALL" REGISTRY IS IN EFFECT,
19 COMPLY WITH FEDERAL LAW AND REGULATIONS CONCERNING TELEMARKETING
20 SALES AND THE REGISTRY; OR

21 (II) IF THE COMMISSION FINDS THAT THE FEDERAL "DO NOT CALL"
22 REGISTRY IS NOT IN EFFECT UNDER SUBSECTION (B)(1)(II) OF THIS SECTION:

23 1. PURCHASE THE LATEST UPDATED VERSION OF THE
24 DATABASE FROM THE COMMISSION; AND

25 2. IF THE PERSON INTENDS TO MAKE TELEPHONE
26 SOLICITATIONS ON BEHALF OF MORE THAN ONE CLIENT, PURCHASE A SEPARATE
27 COPY OF THE DATABASE FOR EACH CLIENT.

28 (F) (1) A PERSON MAY NOT VIOLATE THE TELEPHONE CONSUMER
29 PROTECTION ACT, 47 U.S.C. § 227, AS IMPLEMENTED BY THE FEDERAL TRADE
30 COMMISSION IN THE TELEMARKETING SALES RULE (16 C.F.R. PART 310) AND THE
31 FEDERAL COMMUNICATIONS COMMISSION IN THE RESTRICTIONS ON
32 TELEMARKETING AND TELEPHONE SOLICITATIONS RULE (64 C.F.R. SUBPART L).

33 (2) A PERSON MAY NOT MAKE OR CAUSE TO BE MADE ANY TELEPHONE
34 SOLICITATION TO A TELEPHONE NUMBER THAT IS LISTED ON THE LATEST UPDATED
35 VERSION OF THE DATABASE.

36 (3) A PERSON MAY USE INFORMATION CONTAINED IN THE DATABASE
37 AND INFORMATION USED TO CREATE AND OPERATE THE DATABASE ONLY:

1 (I) TO COMPLY WITH THIS SECTION; OR

2 (II) IN A PROCEEDING OR ACTION TO ENFORCE THIS SECTION.

3 (G) EACH SOLICITATION AND EACH PROHIBITED PRACTICE IN VIOLATION OF
4 THIS SECTION IS A SEPARATE VIOLATION.

5 (H) IN CONDUCTING TELEPHONE SOLICITATIONS, THE USE OF AN
6 AUTOMATED DIALING, PUSH-BUTTON, OR TONE-ACTIVATED DEVICE THAT
7 OPERATES SEQUENTIALLY OR IN A MANNER SO THAT THE USER IS OTHERWISE
8 UNABLE TO AVOID CONTACTING TELEPHONE NUMBERS IN THE RESIDENTIAL
9 SUBSCRIBER DATABASE IS PRIMA FACIE EVIDENCE OF AN INTENTION TO VIOLATE
10 THIS SECTION.

11 (I) A PERSON RECEIVING A TELEPHONE SOLICITATION IN VIOLATION OF
12 SUBSECTION (F) OF THIS SECTION MAY BRING AN ACTION IN A COURT OF
13 COMPETENT JURISDICTION AGAINST THE PERSON MAKING THE TELEPHONE
14 SOLICITATION OR THE PERSON ON WHOSE BEHALF THE SOLICITATION WAS MADE
15 TO RECOVER:

16 (1) THE GREATER OF:

17 (I) LIQUIDATED DAMAGES OF \$11,000; OR

18 (II) ACTUAL DAMAGES; AND

19 (2) REASONABLE ATTORNEY'S FEES.

20 (J) A PERSON MAY NOT BRING AN ACTION UNDER SUBSECTION (F) OF THIS
21 SECTION AFTER THE LATER OF:

22 (1) 2 YEARS AFTER THE PERSON KNEW OR SHOULD HAVE KNOWN OF
23 THE ALLEGED VIOLATION OF SUBSECTION (F) OF THIS SECTION; OR

24 (2) 2 YEARS AFTER THE TERMINATION OF ANY PROCEEDING OR ACTION
25 BY THE STATE AGAINST A PERSON CONDUCTING THE TELEPHONE SOLICITATION
26 FOR AN ALLEGED VIOLATION OF SUBSECTION (F) OF THIS SECTION.

27 (K) A DEFENDANT MAY ASSERT AN AFFIRMATIVE DEFENSE IN ANY ACTION OR
28 PROCEEDING BROUGHT UNDER SUBSECTION (I) OF THIS SECTION OR § 14-2206 OF
29 THIS SUBTITLE THAT THE DEFENDANT HAS ESTABLISHED AND IMPLEMENTED
30 REASONABLE PRACTICES AND PROCEDURES EFFECTIVELY TO PREVENT TELEPHONE
31 SOLICITATIONS IN VIOLATION OF THIS SECTION IF THE DEFENDANT:

32 (1) HAS ESTABLISHED AND IMPLEMENTED THOSE PRACTICES AND
33 PROCEDURES WITH DUE CARE;

34 (2) HAS TRAINED ITS PERSONNEL, AND EACH PERSON ASSISTING IN
35 COMPLIANCE, IN THOSE PRACTICES AND PROCEDURES AND HAS TAKEN

1 REASONABLE STEPS TO ENSURE THAT THE PRACTICES AND PROCEDURES ARE
2 FOLLOWED; AND

3 (3) MAINTAINS RECORDS DOCUMENTING THE IMPLEMENTATION AND
4 TRAINING UNDER ITEMS (1) AND (2) OF THIS SUBSECTION.

5 [14-2205.] 14-2206.

6 In addition to any remedies otherwise available at law, a violation of this
7 subtitle shall be:

8 (1) An unfair and deceptive trade practice under Title 13, Subtitle 3 of
9 this article; and

10 (2) If the violation involves a solicitation offering credit services, a
11 violation of the Maryland Credit Services Businesses Act UNDER TITLE 14, SUBTITLE
12 19 OF THIS ARTICLE.

13 SECTION 2. AND BE IT FURTHER ENACTED, That the Office of the
14 Attorney General shall report to the Senate Finance Committee and the House
15 Economic Matters Committee on or before July 1, 2005, on the status of enforcement
16 of the provisions of this Act.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
18 effect July 1, 2004.